

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS Jose C. Rodriguez, Trustee	DEFENDANTS Newell D. Boyd, Individually and as Executor of the Estate of Frances Marie Boyd			
ATTORNEYS (Firm Name, Address, and Telephone No.) Robert L. Barrows 210-226-4131 Warren, Drugan & Barrows, P.C. 800 Broadway, San Antonio, TX 78215	ATTORNEYS (If Known)			
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(c) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: right;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(c) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: right;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ <u>100,000.00</u>			
Other Relief Sought				

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Stephen W. Boyd		BANKRUPTCY CASE NO. 11-51797
DISTRICT IN WHICH CASE IS PENDING Western	DIVISION OFFICE San Antonio	NAME OF JUDGE Craig A. Gargotta
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) R. L. Barrows		
DATE May 22, 2013		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Robert L. Barrows

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:	§	CASE NO. 11-51797
	§	
STEPHEN W. BOYD	§	
	§	
DEBTOR	§	CHAPTER 7 CASE

JOSE C. RODRIGUEZ, TRUSTEE,	§	
	§	
Plaintiff,	§	
	§	ADVERSARY PROCEEDING
v.	§	
	§	NO. _____
NEWELL D. BOYD, INDIVIDUALLY	§	
AND AS EXECUTOR OF THE ESTATE	§	
OF FRANCES MARIE BOYD,	§	
	§	
Defendant.	§	

**COMPLAINT TO AVOID POSTPETITION OFFSET
OF PROPERTY OF THE ESTATE AND FOR DAMAGES**

TO THE HONORABLE CRAIG A. GARGOTTA, UNITED STATES BANKRUPTCY JUDGE:

JOSE C. RODRIGUEZ, Chapter 7 Trustee, ("Trustee") files his COMPLAINT TO AVOID POSTPETITION OFFSET OF PROPERTY OF THE ESTATE AND FOR DAMAGES against Newell D. Boyd, individually and as Executor of the Estate of Frances Marie Boyd.

JURISDICTION

1. This Court has jurisdiction of this proceeding pursuant to 28 U.S.C. § 1334. This COMPLAINT is filed pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure and

§§ 362, 549, 550 and 551 of Title 11 U.S.C. (“The Bankruptcy Code”). This matter is a core proceeding as defined by 28 U.S.C. § 157(b)(2).

PARTIES

2. Defendant Newell D. Boyd (“Defendant”) is a transferee in this Chapter 7 case, is being sued individually and in his capacity as Independent Executor of the Estate of Frances Marie Boyd, and may be served with process pursuant to Rule 7004 F.R.B.P. by first class mail at 1206 Ripple Creek, Houston, Texas 77057.

3. Plaintiff is the Trustee in this Chapter 7 case.

BACKGROUND

4. Frances Boyd was the mother of the Defendant and Stephen W. Boyd, the Debtor in this case (“Debtor”) and Barbara Marlow.

5. Frances Boyd passed away March 23, 2011. At the time of her death, the assets of the Newell D. Boyd Marital Trust (“Trust”) and Frances Boyd passed to Defendant, the Debtor and Barbara Marlow, pro rata.

6. The Debtor filed bankruptcy two months later on May 24, 2011. Therefore, the Debtor’s interests in the Trust assets and the Frances Boyd probate estate (“Probate Estate”) became property of the bankruptcy estate.

7. On June 6, 2011, the Will of Frances Boyd was admitted into probate and Defendant was appointed Independent Executor. Defendant calculated that the Debtor was entitled to one-third of the proceeds of the liquidation of the Trust investment account, which included all of the Trust assets and almost all of the Probate Estate, and Debtor’s one-third totaled \$257,310.85.

8. Defendant unilaterally and without notice to or approval by the Trustee or the Bankruptcy Court exercised an offset against property of the bankruptcy estate in the amount of \$100,000.00 on August 17, 2011. Defendant, at Debtor's instruction, sent the balance of Debtor's distribution, \$157,310.85, to the Stephen Wayne Boyd Heritage Trust where it was controlled by the Debtor and promptly spent.

9. The Debtor never disclosed these assets in his bankruptcy Schedules and Statement of Financial Affairs. Prolonged and contested discovery by a creditor finally revealed their existence in the fall of 2011. By then, the Debtor had spent almost all of his distribution.

CAUSE OF ACTION – 11 U.S.C. § 362(a)

10. The offset by Defendant is a violation of 11 U.S.C. § 362(a) and is void.

CAUSE OF ACTION – 11 U.S.C. § 549

11. The offset by Defendant is a transfer of property of the Bankruptcy Estate. The offset occurred after the commencement of the case. The offset is authorized only under § 303(f) or § 542(c) of the Bankruptcy Code. The offset is not authorized by the Bankruptcy Code or by the Court.

RECOVERY OF AVOIDED TRANSFER – 11 U.S.C. § 550

12. The Trustee incorporates all of the following: Paragraphs 4 through 11. The Trustee meets the requirements of § 549(a) of the Bankruptcy Code and is entitled to avoid the offset.

13. Defendant was the initial transferee or immediate transferee of the offset.

14. Accordingly, the Trustee is entitled to recover a money judgment for \$100,000.00 from Defendant.

PRAYER

The Trustee prays that the Defendant be cited to appear and answer, that this matter be set for trial and upon final hearing, the Trustee recover:

1. Avoidance of the offset with relief in the form of all remedies available pursuant to 11 U.S.C. §§ 362, 549 and 550, including but not limited to a money judgment of \$100,000.00;
2. Pre and post-judgment interest as allowed by law.
3. Reasonable attorney's fees and costs as allowed by law
4. General relief.

Respectfully Submitted,

WARREN, DRUGAN & BARROWS, P.C.
800 Broadway
San Antonio, Texas 78215
Telephone: (210) 226-4131
Facsimile: (210) 224-6488

By: Robert L. Barrows
Robert L. Barrows
State Bar No. 01833500

Attorney For Trustee, Jose C. Rodriguez